



## Authorization to Release Protected Health Information (PHI) Policy

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**Policy**

It is the policy of the San Bernardino County (County) Department of Behavioral Health (DBH) to obtain and complete a valid form COM001 [Authorization to Release Protected Health Information \(PHI\)](#) prior to releasing DBH client mental health and substance use treatment records, and to ensure adherence to Welfare and Institutions Code (WIC) Section 5328, 42 Code of Federal Regulations (CFR) Part 2, and 45 CFR Part 160 and 164.

**Purpose**

To provide instruction to the DBH workforce for responding to requests to disclose records received from DBH clients, client legal representatives and other third-party requestors, in a manner which is consistent with Department, County, state and federal requirements and regulations.

**Definition(s)**

**42 Code of Federal Regulations (CFR) Part 2:** Federal regulations governing confidentiality of substance use disorder patient records.

**42 CFR Part 2 Program:** A program in which an individual or entity is federally assisted and holds itself out as providing, and provides, alcohol or drug abuse diagnosis, treatment or referral for treatment.

**Administrative Request (exception):** This exception allows a covered entity to disclose protected health information for a law enforcement purpose to a law enforcement official in response to an "administrative request, including administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized under law, provided that:

- The information sought is relevant and material to a legitimate law enforcement inquiry;
- The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and
- De-identified information could not reasonably be used.

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# Authorization to Release Protected Health Information (PHI) Policy, Continued

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**Definition(s),  
continued**

**Authorization for Release of Protected Health Information:** A Health Insurance Portability and Accountability Act (HIPAA) and 42 Code of Regulations (C.F.R.) Part 2 compliant authorization signed by the client or client's legal representative, authorizing DBH to release the client's information to a designated recipient. This form must be completed thoroughly with specified records to be shared, a designated time frame and expiration date, as well as a signature by the DBH client or legal representative. If the form is signed by a legal representative, proof from the court system designating legal representation must accompany the request.

**Business Associate:** An entity whom conducts the following on behalf of the covered entity where the provision of services named involves the disclosure of protected health information: creates, receives, maintains or transmits protected health information for a function or activity involving the use or disclosure of protected health information, including claims processing/administration, data analysis, data storage, utilization review, quality assurance, billing, benefit management, practice management, and repricing; provides legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation or financial services.

**Confidentiality:** The duty of anyone entrusted with protected health information or personally identifiable information to safeguard and keep that information private.

**Covered Entity (CE):** Includes: 1) health care providers, 2) health plans, and 3) health care clearing houses who transmit any health information in electronic form in connection with a transaction covered by the Privacy and Security Rules.

**General Designation:** A 42 CFR Part 2 recipient designation option on an Authorization for Release of Protected Health Information form that facilitates the disclosure of PHI to entire groups of individuals (e.g., "All my treating providers").

**Health Insurance Portability and Accountability Act (HIPAA):** A federal law designed to improve portability and continuity of health insurance coverage in the group and individual markets, to combat waste, fraud, and abuse in health insurance and health care delivery, to promote the use of medical savings accounts, to improve access to long-term care services and coverage, to simplify the administration of health insurance, and for other purposes.

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# Authorization to Release Protected Health Information (PHI) Policy, Continued

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**Definition(s),  
continued**

**HIPAA Privacy Rule:** The HIPAA Privacy Rule establishes national standards to protect clients' medical records and PHI and applies to covered entities and their business associates. The Rule requires appropriate safeguards to protect the privacy of PHI and sets limits and conditions on the uses and disclosures that may be made of such information without patient authorization. The Rule also gives clients rights over their health information, including rights to examine and obtain a copy of their health records, and to request corrections.

**Personally Identifiable Information (PII):** PII is information that can be used alone or in conjunction with other personal or identifying information and is linked or linkable to a specific individual. This includes name, social security number, date of birth, address, driver's license, photo identification, other identifying number (i.e. case number, client index number, medical record number etc.).

**Protected Health Information (PHI):** PHI is *individually identifiable health information* held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper or oral. Individually identifiable information is information, including demographic data, that relates to the individual's past, present or future physical or mental health or condition; the provision of health care to the individual; or the past, present, or future payment for the provision of health care to the individual, and identifies the individual or for which there is reasonable basis to believe it can be used to identify the individual. PHI excludes individually identifiable health information in education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g; in records described at 20 U.S.C. 1232g(a)(4)(B)(iv); in employment records held by a covered entity in its role as employer; and regarding a person who has been deceased for more than fifty (50) years.

**Qualified Service Organization (QSO):** A QSO is an individual or entity who provides services to a Part 2 program, such as data processing, bill collecting, lab analyses, accounting, etc.

**Services:** Mental health or substance use disorder and recovery treatment services that include prevention, case management, therapy, and medication support activities. "Services" contracted through other departments or community-based organizations deem the organization a "service provider".

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# Authorization to Release Protected Health Information (PHI) Policy, Continued

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## Definition(s), continued

**Treating Provider Relationship:** The patient agrees to or is legally required to be diagnosed, evaluated and/or treated, or agrees to accept consultation for any condition by an individual or entity; and the individual or entity undertakes or agrees to undertake diagnosis, evaluation and/or treatment of the patient, or consultation with the patient, for any condition regardless of an in-person encounter.

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## Mental Health Specific

The HIPAA Privacy Rule requires a covered entity to obtain an individual's written authorization for any use or disclosure of PHI other than for treatment, payment or health care operations (TPO) or uses and disclosures otherwise permitted by the Privacy Rule.

- **Treatment:** The provision, coordination, or management of health care and related services for an individual by one or more health care providers, including consultation between providers regarding a patient and referral of a patient by one provider to another.
- **Payment:** Activities of a health plan to obtain premiums, determine or fulfill responsibilities for coverage and provision of benefits, and furnish or obtain reimbursement for health care delivered to an individual and activities of a health care provider to obtain payment or be reimbursed for the provision of health care to an individual.
- **Health care operations:** Any of the following activities: (a) quality assessment and improvement activities, including case management and care coordination; (b) competency assurance activities, including provider or health plan performance evaluation, credentialing, and accreditation; (c) conducting or arranging for medical reviews, audits, or legal services, including fraud and abuse detection and compliance programs; (d) specified insurance functions, such as underwriting, risk rating, and reinsuring risk; (e) business planning, development, management, and administration; and (f) business management and general administrative activities of the entity, including but not limited to: de-identifying protected health information, creating a limited data set, and certain fundraising for the benefit of the covered entity.

### **HIPAA Disclosure Exceptions**

Written authorization for disclosure may not be required under HIPAA for purposes other than TPO, including but not limited to:

- The individual whose records are being requested;
- Opportunity to agree or object (e.g., informal permission for family member or identified persons to be involved in care or payment for care);

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# Authorization to Release Protected Health Information (PHI) Policy, Continued

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## **Mental Health Specific, continued**

- Public interest and benefit activities (e.g., court order, required notification of communicable diseases, report abuse, report of a crime or death to law enforcement, to prevent a serious and imminent threat to public safety),
- Limited data set for the purposes of research, public health or health care operations, or
- A covered entity may condition the provision of health care that is solely for the purpose of creating protected health information for disclosure to a third party on provision of an authorization for the disclosure of the protected health information to such third party.

Similar to HIPAA, WIC §5328 allows for the disclosure of PHI with a valid written authorization signed by the individual or his/her legal representative, and for the purpose of treatment, payment or health care operations. When a conflict arises between HIPAA and the state law pertaining to privacy, the more stringent of the two must be followed.

### **WIC 5328 Disclosure Exceptions**

Written authorization may not be required under WIC §5328 for purposes other than TPO, including but not limited to:

- To the courts to administer justice;
- To law enforcement to protect a federal and state elective constitutional officer and their families;
- For a legislative investigation authorized by the Senate or Assembly Committees;
- Between qualified professionals on multidisciplinary teams involved in child abuse or neglect proceedings per §18951, or elder abuse or neglect proceedings per §15750;
- To County Behavioral Health Director or law enforcement officer pursuant to §5152.1 and 5250.1 (notification to individual that writes a 5150 hold upon release of the individual as requested);
- Between qualified professionals on multidisciplinary teams involved in child abuse or neglect proceedings per §18951, or elder abuse or neglect proceedings per §15750;
- To County Behavioral Health Director or law enforcement officer pursuant to §5152.1 and 5250.1 (notification to individual that writes a 5150 hold upon release of the individual as requested);
- When the patient, in the opinion of his/her psychotherapist, presents a serious danger of violence to a reasonably foreseen victim or group of victims;
- To emergency response personnel regarding possible exposure to HIV or AIDS (Ryan White Comprehensive AIDS Resources Emergency Act of 1990);

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# Authorization to Release Protected Health Information (PHI) Policy, Continued

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## Mental Health Specific, continued

- In response and cooperation with a valid search warrant or warrant to arrest;
  - During the provision of administering emergency services and care, or
  - To a business associate or for health care operations.
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## Substance Use Disorder Specific

A substance use disorder provider must follow privacy standards as described in 42 CFR Part 2, including disclosure standards and consent form/authorization completion.

### **SUD Disclosure Exceptions**

Unlike mental health programs, substance use disorder programs cannot share PHI for treatment, payment or health care operations without written authorization. Information may only be shared without a valid written authorization/consent form for the following:

- A bon-a-fide medical emergency (release to medical professional);
- To a qualified service organization (QSO) who provides administrative services under a service agreement – this does not apply to treatment providers or care coordination and does not exempt the requirement to obtain an Authorization for referral or treatment (e.g., data processing, bill collecting, accounting);
- For research purposes (no data linkage to any one individual);
- For auditing purposes in adherence with state and federal law (confidentiality statement of non-re-disclosure must be signed);
- In response to a signed court order (not a subpoena);
- To prevent a serious or imminent threat to public safety (as under HIPAA);
- To report a crime that occurred on program premises or against program staff, or
- To report child abuse or neglect or elder abuse or neglect.

**Note:** In all instances of disclosure of information of a recipient of SUD services, all reasonable efforts must be made to not disclose participation in a Part 2 program without express written authorization.

In accordance with 42 CFR Part 2 Final Rule effective August 14, 2020, a Part 2 provider may, with prior client authorization, orally convey a client's PHI to a non-Part 2 provider for treatment purposes. The PHI does not become a Part 2 record for the non-Part 2 provider even if the verbal disclosure is documented in writing by the non-Part 2 provider.

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# Authorization to Release Protected Health Information (PHI) Policy, Continued

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## Substance Use Disorder Specific, continued

A single consent for the use and disclosure of Part 2 records for treatment, payment, and health care operations is permitted. The following elements must be included in the consent:

- Purpose may be described as “For treatment, payment, and health care operations, and
- Recipient may be described as “My treating providers, health plans, third-party payers, and people helping to operate this program”, or something similar

### HIPAA Covered Entity & Business Associate Statement:

- If the Recipient is (or could be) a HIPAA Covered Entity or Business Associate of a HIPAA Covered Entity, the Part 2 TPO Consent must contain the following statement:
  - “Your Part 2 Record (or information contained in your Part 2 Record) may be redisclosed in accordance with the permissions contained in the HIPAA regulations, except for uses and disclosures for any civil, criminal, administrative, and legislative proceedings against you.”

To disclose other SUD related PHI, a valid authorization, also referred to as a consent form, must be obtained. The following must be included in the consent form:

- The name of an individual **or** the name of an entity, with or without a treating provider relationship with the client, or
- The name of an entity that facilitates the exchange of health information (HIE) or is a research institution. In this instance, one of the following additional identifiers is also required on the authorization form:
  - Name of individual participant(s);
  - Name of entity participant(s) with which the client has a treating provider relationship, or
  - General designation of individual or entity participant(s) or class of participants with which the client has a treating provider relationship (e.g., “All my treating providers at “name of entity”). For example, information may be shared with an intermediary, such as a Health Information Exchange, which may disclose to its participants that have a treating provider relationship with the SUD client.
- The amount and kind of SUD treatment information that may be disclosed must be specified on the Authorization.

**Note: A copy of the signed consent must accompany each disclosure.**

**Amount and Kind Descriptors**

Descriptors within the Authorization form must be explicit, indicating exactly the information to be released as follows:

- How much and what kind of information is to be disclosed, including an explicit description of the substance use disorder information that may be disclosed.
- Acceptable example - “medications and dosages, including substance use disorder-related medications,” or “all of my substance use disorder-related claims/encounter data.”
- Un-acceptable example - “all of my records” or “only my substance use disorder records my family knows about.”

**Lawful Holder Implications**

When an individual or entity who receives Part 2-protected information as the result of a written client consent, or another exception to Part 2’s consent requirements, the individual or entity becomes a “lawful holder” of the Part 2 information. As a “lawful holder” the individual or entity must now follow the requirements of 42 CFR Part 2 just as if they were a Part 2 program.

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# Authorization to Release Protected Health Information (PHI) Policy, Continued

## Substance Use Disorder Specific, continued

### General Designation Implications

If a general designation selection is used on the authorization form, there must be verification that the treating provider relationship exists with the client whose information is being disclosed. For example, an attestation must be obtained by the processing party (clinic or Medical Records).

### List of Disclosures

If a general designation selection is used on the authorization form, the client must be provided, upon request, a list of entities to whom their information has been disclosed pursuant to the general designation (the list of disclosures).

## Authorization Guidelines

A properly completed [Authorization to Release Protected Health Information \(PHI\)](#) form (COM001) **is required** under the following circumstances:

If ...	Then ...
A DBH SUD program needs to disclose a client's PHI to an internal or external mental health program (e.g. a referral to treatment)	Authorization <b><u>is</u></b> needed for a DBH SUD program to disclose a client's PHI to a DBH mental health program (e.g. a referral to treatment)
A DBH SUD program needs to disclose a client's PHI for the purpose of TPO	Authorization <b><u>is</u></b> needed for a DBH SUD program to disclose a client's PHI for the purpose of TPO.  <b>Note:</b> A single authorization form completed by a DBH client for the purposes of TPO is sufficient for all future uses and disclosures. A copy of the signed consent must accompany each disclosure.
A minor consents to their own treatment	Authorization from the minor <b><u>is</u></b> needed to disclose the minor's PHI.  <b>Note:</b> The provider can only share the minor's medical records with parent(s) if there is a signed authorization from the minor.
If there is any uncertainty whether an authorization is required for the release of PHI	Authorization <b><u>is</u></b> needed; obtain the client's written Authorization

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# Authorization to Release Protected Health Information (PHI) Policy, Continued

## Authorization Guidelines, continued

The following circumstances **do not require** an authorization form:

If ...	Then ...
A DBH mental health program needs to disclose a client's PHI for the purpose of treatment, payment, or health care operations (TPO)	<b>No</b> authorization is needed for a DBH mental health program to disclose a client's PHI for the purpose of TPO

## Reference(s)

California Welfare and Institutions Code, Section 5328  
Code of Federal Regulations, Title 42 Part 2 Final Rule  
Code of Federal Regulations, Title 45, Section 164 - Health Insurance  
Portability and Accountability Act Privacy Rule Subpart E